

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

STUART WAYNE TOMPKINS,)
)
 Plaintiff,)
)
 v.) 1:17CV772
)
 JACK CLELLAND, et al.,)
)
 Defendant(s).)

ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff, a prisoner of the State of North Carolina and frequent pro se litigant in the federal courts, submitted a civil rights action pursuant to 42 U.S.C. § 1983, together with an application to proceed *in forma pauperis*. The form of the Complaint is such that the Court cannot further process the Complaint. The problem is:

1. Pursuant to the Prison Litigation Reform Act, Plaintiff may no longer proceed *in forma pauperis* in this Court unless he is under imminent danger of serious physical injury. The Act provides that:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). A search of court records reveals that Plaintiff has previously had three cases dismissed on the grounds that they were frivolous, malicious, or failed to state a claim for relief under 28 U.S.C. § 1915A. See Tompkins v. Thomas, No. 5:11-CT-3049, Docket Entry 13 (E.D.N.C. Nov. 7, 2011); Tompkins v. Mitchell, No. 1:10CV186, Docket Entry 31 (W.D.N.C. Oct 14, 2010); Tompkins v. Dept. of Correction, No. 5:02-CT-179, Docket

Entry 14 (E.D.N.C. July 25, 2002). Plaintiff's only current allegations concern the delivery of his mail. Therefore, he does not make a sufficient showing that he faces imminent danger of any serious physical injury.

Consequently, the Complaint should be dismissed, but without prejudice to Plaintiff filing a new complaint, on the proper § 1983 forms, which corrects the defect of the present Complaint. If Plaintiff does seek to file such a complaint, he should request the forms for doing so from the Clerk of Court. *In forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation.

Plaintiff also filed a Motion (Docket Entry 3) seeking leave to file for a preliminary injunction and a Motion (Docket Entry 4) seeking a preliminary injunction. In light of the recommendation that this case be dismissed, those Motions should also be denied.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation.

IT IS RECOMMENDED that Plaintiff's Motions (Docket Entries 3, 4) seeking to file a motion for a preliminary injunction and seeking a preliminary injunction be denied and that this action dismissed *sua sponte* without prejudice to Plaintiff filing a new complaint, on the proper § 1983 forms, which corrects the defect cited above.

This, the 31st day of August, 2017.

/s/ L. Patrick Auld
L. Patrick Auld
United States Magistrate Judge